

## Department of Veterans Affairs

## §21.5838

(i) The veteran or servicemember is not providing over one-half the child's support, or

(ii) The child is not enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense or the Secretary of Education, as the case may be;

(2) The date, following the child's 21st birthday, on which the veteran or servicemember stops providing over one-half the child's support;

(3) The date, following the child's 21st birthday, on which he or she is no longer enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense or the Secretary of Education, as the case may be;

(4) The child's 23rd birthday;

(5) the date the child marries.

(Authority: 10 U.S.C. 2147(d))

(k) *Dependent child ceases to be dependent: veteran or servicemember deceased.* If a veteran or servicemember is deceased and his or her dependent child is not incapable of self support due to physical or mental incapacity, VA will discontinue the dependent child's award of educational assistance whenever the child does not meet the definition of a *dependent child* found in §21.5720(c). The effective date of discontinuance is the earliest of the following:

(1) The day after the child's 21st birthday, if on that date the child is not enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense or the Secretary of Education, as the case may be;

(2) The date following the child's 21st birthday on which he or she is no longer enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense or the Secretary of Education, as the case may be;

(3) The child's 21st birthday; or

(4) The date the child marries.

(Authority: 10 U.S.C. 2147(d))

### §21.5838 Overpayments.

(a) *Educational assistance.* If an individual receives educational assistance but the educational assistance must be

discontinued according to §21.5835, the amount of educational assistance attributable to the portion of the term, quarter or semester following the effective date of discontinuance shall constitute a debt due the United States.

(1) The amount of the debt is equal to the product of—

(i) The number of days the individual was entitled to receive subsistence allowance during the enrollment period for which educational assistance was paid, divided by the total number of days in that enrollment period, and

(ii) The amount of educational assistance provided for that enrollment period.

(2) Nothing in this method of calculation shall change the fact that the number of months of educational assistance to which the individual remains entitled shall always be the same as the number of months of subsistence allowance to which the individual is entitled.

(Authority: 10 U.S.C. 2143)

(b) *Subsistence allowance.* If an individual receives subsistence allowance under any of the following conditions, the amount of that subsistence allowance shall constitute a debt due the United States unless the debt is waived as provided by §§1.955 through 1.970 of this chapter.

(1) Subsistence allowance received for courses pursued while on active duty;

(2) Subsistence allowance received for courses which are precluded under §21.5800(b);

(3) Subsistence allowance received by a person who is not eligible for educational assistance under §21.5740;

(4) Subsistence allowance received by an individual who has exhausted all entitlement provided under §21.5742;

(5) Subsistence allowance received by an individual for a period before the commencing date determined by §21.5831.

(6) Subsistence allowance received by an individual for a period following a discontinuance date determined by §21.5835.

(7) Subsistence allowance received by an individual in excess of the part-time

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rate for a period following a reduction date determined by § 21.5835.

(Authority: 10 U.S.C. 2144)

### MEASUREMENT OF COURSES

#### § 21.5870 Measurement of courses.

(a) *Credit hour measurement: undergraduate, standard term.* An individual who enrolls in a standard quarter or semester for 12 undergraduate credit hours is a full-time student. An individual who enrolls in a standard quarter or semester for less than 12 undergraduate credit hours is a part-time student.

(Authority: 10 U.S.C. 2144(c))

(b) *Credit hour measurement: Undergraduate, nonstandard term.* (1) If an individual enrolls in a nonstandard term, quarter or semester, and the school measures the course on a credit-hour basis, VA will determine whether that individual is a full-time student by—

(i) Multiplying the credits earned in the term by 18 if credit is granted in semester hours, or by 12 if credit is granted in quarter hours, and

(ii) Dividing the product by the number of whole weeks in the term.

(2) In determining whole weeks VA will—

(i) Divide the number of days in the term by 7;

(ii) Disregard a remainder of 3 days or less, and

(iii) Consider 4 days or more to be a whole week.

(3) If the number obtained by using the formula in paragraphs (b)(1) and (2) of this section is 12 or more, the individual is a full-time student. If that number is less than 12, the individual is a part-time student.

(c) *Credit hour measurement: graduate.*

(1) If it is the established policy of a school to consider less than 12 credit hours to be full-time for graduate students, VA will accept the statement of a responsible school official as to whether the student is a full-time or part-time student. If the school does not have such a policy, VA will measure the student's enrollment according to the provisions of paragraphs (a) and (b) of this section.

(2) VA will measure undergraduate courses required by the school accord-

ing to the provisions of paragraphs (a) and (b) of this section, even though the individual is enrolled as a graduate student. If the individual is taking both graduate and undergraduate courses, the school will report the credit-hour equivalent of the graduate work. VA will first measure the undergraduate courses according to the provisions of paragraphs (a) and (b) of this section and combine the result with the credit-hour equivalent of the graduate work in order to determine the extent of training.

(d) *Clock hour measurement.* (1) If an individual enrolls in a course measured in clock hours and shop practice is an integral part of the course, he or she is a full-time student when enrolled in 22 clock hours or more per week with not more than a 2½ hour rest period allowance per week. For all other enrollments the individual is a part-time student. VA will exclude supervised study in determining the number of clock hours in which the individual is enrolled.

(2) If an individual enrolls in a course measured in clock hours and theory and class instruction predominate in the course, he or she is a full-time student enrolled in 18 clock hours or more per week. He or she is a part-time student when enrolled in less than 18 clock hours per week. Customary intervals not to exceed 10 minutes between classes will be included in measuring net instruction. Shop practice, rest periods, and supervised study are excluded. Supervised instruction periods in schools' shops and the time involved in field trips and individual and group instruction may be included in computing the clock hour requirements.

(Authority: 10 U.S.C. 2144(c))

### ADMINISTRATIVE

#### § 21.5900 Administration of benefits program—chapter 107, title 10 U.S.C.

In administering benefits payable under Chapter 107, Title 10 U.S.C., VA will be bound by the provisions of the §§ 21.5700, 21.5800 and 21.5900 series of regulations.

(Authority: 10 U.S.C. 2144(c))